

HOUSE BILL 80

Unofficial Copy
E2

2004 Regular Session
4lr0987
CF 4lr1133

(PRE-FILED)

By: ~~Delegate Sophocleus~~ Delegates Sophocleus, V. Clagett, Leopold,
McMillan, Aumann, Boschert, G. Clagett, Dwver, Elmore, Gilleland,
Love, McDonough, and Sossi

Requested: November 17, 2003
Introduced and read first time: January 14, 2004
Assigned to: Judiciary

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 27, 2004

CHAPTER _____

1 AN ACT concerning

2 **Courts - Criminal Cases - ~~State's Right of Appeal~~ Release of Defendant**
3 **Charged with Crime of Violence Pending Appeal by the State**

4 FOR the purpose of ~~repealing a provision of law that requires that certain charges~~
5 ~~against a defendant be dismissed if a decision of a trial court excluding certain~~
6 ~~evidence is affirmed after an appeal by the State; repealing a provision of law~~
7 ~~that requires a defendant be released on personal recognizance bail pending the~~
8 ~~prosecution and determination of an appeal by the State from a decision of a~~
9 ~~trial court that excludes certain evidence offered by the State creating a certain~~
10 ~~exception to the provision of law that requires that a certain defendant be~~
11 ~~released on personal recognizance bail pending the outcome of a certain appeal~~
12 ~~by the State; providing that a court may release a certain defendant on certain~~
13 ~~terms and conditions or may order the defendant remanded to custody pending~~
14 ~~the outcome of a certain appeal by the State; requiring that the determination~~
15 ~~and enforcement of certain conditions of release be made in accordance with~~
16 ~~certain statutory provisions; providing for the application of this Act; and~~
17 ~~generally relating to the State's right of appeal release of a criminal defendant~~
18 ~~pending the outcome of an appeal by the State.~~

19 BY repealing and reenacting, with amendments,
20 Article - Courts and Judicial Proceedings
21 Section 12-302(c)
22 Annotated Code of Maryland
23 (2002 Replacement Volume and 2003 Supplement)

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article - Courts and Judicial Proceedings**

4 12-302.

5 (c) In a criminal case, the State may appeal as provided in this subsection.

6 (1) The State may appeal from a final judgment granting a motion to
7 dismiss or quashing or dismissing any indictment, information, presentment, or
8 inquisition.

9 (2) The State may appeal from a final judgment if the State alleges that
10 the trial judge:

11 (i) Failed to impose the sentence specifically mandated by the
12 Code; or

13 (ii) Imposed or modified a sentence in violation of the Maryland
14 Rules.

15 (3) (i) In a case involving a crime of violence as defined in § 14-101 of
16 the Criminal Law Article, and in cases under §§ 5-602 through 5-609 and §§ 5-612
17 through 5-614 of the Criminal Law Article, the State may appeal from a decision of a
18 trial court that excludes evidence offered by the State or requires the return of
19 property alleged to have been seized in violation of the Constitution of the United
20 States, the Constitution of Maryland, or the Maryland Declaration of Rights.

21 (ii) The appeal shall be made before jeopardy attaches to the
22 defendant. However, in all cases the appeal shall be taken no more than 15 days after
23 the decision has been rendered and shall be diligently prosecuted.

24 (iii) Before taking the appeal, the State shall certify to the court that
25 the appeal is not taken for purposes of delay and that the evidence excluded or the
26 property required to be returned is substantial proof of a material fact in the
27 proceeding. The appeal shall be heard and the decision rendered within 120 days of
28 the time that the record on appeal is filed in the appellate court. Otherwise, the
29 decision of the trial court shall be final.

30 (iv) If the State appeals on the basis of this paragraph, and if on
31 final appeal the decision of the trial court is affirmed, the charges against the
32 defendant shall be dismissed in the case from which the appeal was taken. In that
33 case, the State may not prosecute the defendant on those specific charges or on any
34 other related charges arising out of the same incident.

35 (v) ~~1. Pending~~ EXCEPT AS PROVIDED IN SUBSUBPARAGRAPH 2
36 OF THIS SUBPARAGRAPH, PENDING the prosecution and determination of an appeal
37 taken under paragraph (1) { or (3) } of this subsection, the defendant shall be released
38 on personal recognizance bail. If the defendant fails to appear as required by the

1 terms of the recognizance bail, the trial court shall subject the defendant to the
2 penalties provided in § 5-211 of the Criminal Procedure Article.

3 2. A. PENDING THE PROSECUTION AND DETERMINATION
4 OF AN APPEAL TAKEN UNDER PARAGRAPH (1) OR (3) OF THIS SUBSECTION, IN A CASE
5 IN WHICH THE DEFENDANT IS CHARGED WITH A CRIME OF VIOLENCE, AS DEFINED
6 IN § 14-101 OF THE CRIMINAL LAW ARTICLE, THE COURT MAY RELEASE THE
7 DEFENDANT ON ANY TERMS AND CONDITIONS THAT THE COURT CONSIDERS
8 APPROPRIATE OR MAY ORDER THE DEFENDANT REMANDED TO CUSTODY PENDING
9 THE OUTCOME OF THE APPEAL.

10 B. THE DETERMINATION AND ENFORCEMENT OF ANY
11 TERMS AND CONDITIONS OF RELEASE SHALL BE IN ACCORDANCE WITH THE
12 PROVISIONS OF TITLE 5 OF THE CRIMINAL PROCEDURE ARTICLE.

13 {(vi)} (✓) If the State loses the appeal, the jurisdiction shall pay all
14 the costs related to the appeal, including reasonable attorney fees incurred by the
15 defendant as a result of the appeal.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
17 construed to apply only prospectively and may not be applied or interpreted to have
18 any effect on or application to any appeal taken by the State before the effective date
19 of this Act.

20 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2004.